

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-870770-D2 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Arthur Batchelor

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1487

Arthur Batchelor

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 June 1964, an Examiner of the United States Coast guard at New York, New York suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The four specifications found proved allege that while serving as a pantry messman on board the United States SS EXPORT AIDE under authority of the document above described, on 16 March 1964, in the Port of New York, Appellant addressed two members of the crew with foul and abusive language and threatened the same two seaman with bodily harm.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the two crew members directly involved (the Chief Steward and Third Cook) as well as the testimony of the Purser and Second Cook. The Investigating Officer also submitted in evidence extracts from the Shipping Articles and entries in the ship's Official Logbook with incorporated statements by the Chief Steward, Third Cook, and the Purser. The Investigating Officer testified in rebuttal relative to the investigation he conducted and the service of charges on Appellant.

In defense, Appellant testified that he was not guilty of any of the offenses alleged. In part, Appellant testified that when he was grabbed by the Chief Steward and rudely told to finish his work, Appellant told the Chief Steward that he would get punched if he grabbed Appellant while on the deck and that Appellant would kill himself if he had to cater to the Chief Steward as the Third Cook did to keep his job.

At the end of the hearing, the Examiner rendered a written decision after considering a memorandum submitted by counsel for Appellant. The Examiner concluded that the charge and four specifications had been proved and entered the order of suspension on probation.

FINDINGS OF FACT

On 16 arch 1964, Appellant was serving as a pantry messman on board the United States SS EXPORT AIDE and acting under authority of his document while the ship was in the Port of New York at the beginning of a foreign voyage. Appellant was assigned to duties in the officers' pantry which wa two or three decks above the galley. His working hours for breakfast were from 0630 to 0930. The galley closed at 0830 so far as preparing breakfast was concerned.

On 16 March, Appellant had ordered his breakfast and received it via a dumb-waiter prior to 0830. About 0835, Appellant called and ordered more bacon. The Third Cook told Appellant that there wa no cooked bacon left and that the galley was closed. Appellant went down to the galley and directed foul and abusive language toward the Third Cook for refusing to fix more bacon. Appellant then sat down in the adjoining crew's messroom and talked with some painters who were working there.

A few minutes later, the Chief Steward entered the messroom and told Appellant to finish his work in the officers' pantry. Appellant berated the Chief Steward with foul and abusive language, and continued his verbal abuse after following him to the galley where the Second and Third Cooks were. While in the galley, Appellant directed similar language toward the Third Cook, threatened to kill him and to throw him overboard, threatened to cut the Chief Steward's throat, but no attempt was made to carry out these threats. Before Appellant subsided, the Purser came to the galley to see the Chief Steward and overheard some of the abusive language used by Appellant. The Chief steward asked the Purser to et the aster and the Purser left to do so. Appellant had left the galley by the time the Master and Chief ate arrived at approximately 0900.

Since Appellant would not discuss the matter with the aster, the Coast Guard was contacted and an Investigating officer was sent to the ship. He questioned the Purser, Chief Steward and Third Cook about the incidents in the crew's messroom and galley. The Investigating Officer did not know until later that the Second Cook witnessed the events in the galley. When an attempt was made to question Appellant, he refused to cooperate. Consequently, the Investigating Officer served the instant charges on Appellant and he was discharged from the ship prior to her departure on this date.

Appellant has no prior record. He has been going to sea since 1947.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Counsel requests that the memorandum submitted to the Examiner be re-examined. No additional contentions are raised on appeal. The memorandum urges that:

The Investigating Officer did not have the power to prefer charges against Appellant because the former did not fully investigate the matter by questioning all the witnesses to the events on which the allegations are based. Shore painters were in the messroom and the Second Cook testified that the Chief Cook was in the galley.

The charge is not supported by the specifications. Appellant completely denied that he is guilty and this is corroborated by the testimony of the Second Cook. On the other hand, there are

conflicts in the statements attached to the logbook and in the testimony of the Government witnesses. Since the Government did not carry its burden of proving the alleged offenses, the charge against Appellant is unfounded.

APPEARANCE: Marion O. Jones of New York City, by Isiah J. Williams III, Esquire, of Counsel

OPINION

I agree with the Examiner that the matter was adequately investigated before charges were served and that there is substantial evidence to support the offenses alleged.

Before charging Appellant, the Investigating Officer questioned most of the persons known to have direct knowledge of the events being investigated. He attempted to question Appellant, he did not know that the Chief Cook was in the galley at the pertinent times, and the Second Cook was not questioned although he was called as a witness. In any event, it is perfectly clear that, based on the two logbook entries and the three attached statements alone, there were "reasonable grounds," as required by 46 CFR 137.05-15(a)(1), to believe that Appellant was guilty as alleged. Therefore, it is my opinion that the investigation was definitely adequate regardless of consideration of the fact that haste was necessary since the ship sailed on the day these incidents occurred.

As stated by the Examiner, there are no material variances in the testimony of three (Chief Steward, Third Cook, Purser) of the four Government witnesses who testified as to the offenses, or in their statements attached to the logbook. Although the fourth witness, the Second Cook, supports Appellant's denial that he threatened either the Chief Steward or the Third Cook, the Examiner, as a matter of credibility, rejected Appellant's testimony and the negative testimony of the Second Cook that he heard no threats, and accepted the testimony of the Chief Steward and Third Cook as the truth. There is no reason to disturb these findings as to credibility made by the trier of the facts who heard and observed the witnesses. Appellant was free to have called other witnesses to testify in support of his position if he had desired to do so. It is concluded that the evidence accepted as credible constitutes substantial evidence of the alleged offenses.

Appellant was guilty of four offenses which breached the requirement to maintain good order and discipline on shipboard. Nevertheless, the Examiner saw fit to impose a very lenient order in view of Appellant's previously unblemished record while going for approximately seventeen years.

ORDER

The order of the Examiner dated at New York, New York, on 1 June 1964, is AFFIRMED.

W.D. SHEILDS
Vice Admiral, United States Coast Guard

Signed at Washington , D. C., this 29th day of January 1965.

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